
**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH**

GOLSHAN D.,

Plaintiff,

v.

KILOLO KIJAKAZI, Acting Commissioner
of Social Security,

Defendant.

**ORDER ADOPTING REPORT &
RECOMMENDATION TO AFFIRM THE
COMMISSIONER’S DECISION
DENYING DISABILITY BENEFITS AND
DISMISSING ACTION**

2:21-cv-00450-RJS-DAO

Chief Judge Robert J. Shelby
Magistrate Judge Daphne A. Oberg

Plaintiff Golshan D. filed her Complaint¹ on July 26, 2021, seeking review of the Commissioner of the Social Security Administration’s decision denying her application for disability benefits under Title II of the Social Security Act. The administrative law judge (ALJ) denied her application, finding she was not disabled. The Appeals Council denied her request for review.

This action was referred to Magistrate Judge Daphne A. Oberg pursuant to 28 U.S.C. § 636(b)(1)(B).² Judge Oberg issued a detailed Report and Recommendation on January 23, 2023,³ recommending the undersigned affirm the Commissioner’s decision denying benefits as correct—particularly where Ms. D. had incorrectly relied on outdated regulations in arguing the ALJ erred. In her Report and Recommendation, Judge Oberg also cautioned:

¹ Dkt. 4.

² Dkt. 9.

³ Dkt. 25

The court will send copies of this Report and Recommendation to all parties, who are notified of their right to object. Any objection to this Report and Recommendation must be filed within fourteen days of service. Failure to object may constitute waiver of objections upon subsequent review⁴

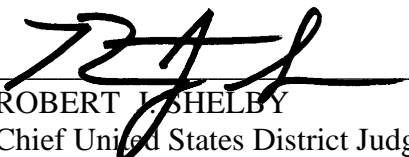
Sixteen days later, neither party has filed any objection to Judge Oberg's Report and Recommendation. Under the Tenth Circuit's "firm waiver" rule, where there is no timely and specific objection, appellate review of both factual and legal questions has been waived.⁵ And while the court may choose not to apply the firm waiver rule "when the interests of justice so dictate," there is no discernable reason in the record for such a course.⁶ Judge Oberg clearly advised the parties of the consequences of any failure to object. And the docket reflects that both parties are represented by counsel.

Moreover, after reviewing the briefing and relevant legal authorities, the court concludes Judge Oberg did not clearly err in analyzing Ms. D.'s appeal. Indeed, the undersigned agrees with her analysis. The court therefore ADOPTS the Recommendation, AFFIRMS the Commissioner's decision, and DISMISSES this action.

The Clerk of Court is directed to close the case.

SO ORDERED this 8th day of February, 2023.

BY THE COURT:


ROBERT J. SHELBY
Chief United States District Judge

⁴ *Id.* at 14.

⁵ *United States v. One Parcel of Real Property*, 73 F.3d at 1059 (quoting *Moore v. United States*, 950 F.2d 656, 659 (10th Cir. 1991)).

⁶ *Moore*, 950 F.2d at 659 (citations omitted) (joining other courts to conclude the firm waiver rule need not apply to pro se litigants who were not advised of the consequences of any failure to object).